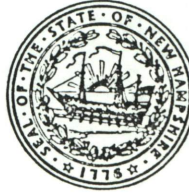


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Mr. John T. Flanders
Associate Commissioner
Department of Public Works & Highways
John O. Morton Building
85 Loudon Road
Concord, New Hampshire 03301

Re: "Tow Away Zones"

Dear Mr. Flanders:

By memo dated June 23, 1983, you asked our office's opinion on the legal authority of the Commissioner of Public Works and Highways to establish, on highways within his jurisdiction, areas where cars parked illegally will be towed away rather than merely issued a parking ticket. In my opinion the Commissioner does have authority to remove immediately from such highways any object, including a parked vehicle, which encumbers or obstructs the highway.

As your memo mentioned, RSA 265:71, IV specifically gives the Commissioner the power to place official regulatory signs on highways under his jurisdiction to prohibit stopping, standing, or parking of vehicles where, in his opinion, such would be dangerous to those using the highway or would unduly interfere with the free movement of traffic. Therefore, assuming the proper procedure is followed in erecting the signs and keeping a record, there is no question as to the Commissioner's power to prohibit these acts.



Next we must consider the specific remedy of physically removing a vehicle in violation of such a sign. Although the statute mentioned above does not refer specifically to towing away the offending vehicle, the Commissioner's general power to protect and control highways does, I believe, give him that power. For example, RSA 236:32 allows the Department of Public Works and Highways to remove immediately anything which encumbers a State-maintained highway. Moreover, the thing may be held until the cost of such removal is paid.

Also, the State of New Hampshire Department of Public Works and Highways may remove any obstruction on a class I, II or III highway. RSA 236:29. That illegally parked cars might be "obstructions" within the meaning of this statute seems reasonable in light of previous interpretations of the word by the New Hampshire Supreme Court. See Ray v. Manchester, 46 N.H. 59 (1865) (Obstructions are objects rather than the acts of highway users); and Hayes v. Company, 86 N.H. 486 (1934) (On factual question whether an object is an obstruction, "It seems too plain for argument that an object beside a highway becomes more dangerous to travelers as its distance from the line of travel decreases."). Since your memo indicates that cars parked in the tow away zones are considered "extreme hazards", it appears that they would also be "obstructions" which may be immediately removed.

In summary, the Commissioner has the power to regulate parking upon highways under his jurisdiction. Although I can find no statutory section dealing specifically with a "tow away zone", I believe that any illegally parked vehicle, depending on the circumstances, may represent an obstruction or an encumbrance on the highway. If so, the vehicle may be immediately removed. The sign designation "tow away zone", while apparently not having independent legal significance, clearly puts drivers on notice of the extreme hazard of parking a vehicle in that area and warns of the likelihood that the vehicle will be removed if left there to obstruct the highway.

If you have any questions on this matter, please call.

Very truly yours,

Martin R Jenkins

Martin R. Jenkins
Assistant Attorney General
Eminent Domain Division

MRJ/krh

83-83-I